

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Metropolitan Life Insurance Company

Docket No. EL06-7-000

ORDER GRANTING REQUEST FOR
DECLARATORY ORDER DISCLAIMING JURISDICTION

(Issued December 21, 2005)

1. In this order the Commission grants Metropolitan Life Insurance Company's (MetLife) petition for a declaratory order disclaiming jurisdiction and finds MetLife is not a public utility as defined in section 201 of the Federal Power Act (FPA)¹ by reason of its upstream passive ownership interest in a 1,884 MW coal-fired generating facility operated by EME Homer City Generating L.P. (EME Homer City).

I. Background

2. On May 24, 2005, MetLife, General Electric Capital Corporation (General Electric Capital) and EME Homer City filed an application under section 203 of the FPA² requesting that the Commission approve the transfer of upstream ownership interests currently held by a special purpose entity (OL LLC 6) wholly-owned by General Electric Capital to MetLife. The application asserted that MetLife was simply stepping into the shoes of General Electric Capital, which had a passive ownership interest in the facility, and should be considered a passive owner of the facility and not a "public utility." MetLife states that the June 27, 2005 order approving the transaction did not address the jurisdictional issue raised in the application.³ MetLife seeks a formal declaration from the Commission confirming that MetLife is not a "public utility" as that term is defined in section 201(e) of the FPA.⁴

¹ 16 U.S.C. § 824 (2000).

² 16 U.S.C. § 824(b) (2000).

³ See *EME Homer City Generation L.P.*, 111 FERC ¶ 62,332 (2005).

⁴ 16 U.S.C. § 824(e) (2000).

3. MetLife is a wholly-owned subsidiary of MetLife, Inc. MetLife, Inc. is a provider of insurance and other financial services to individual and institutional customers. According to MetLife, neither MetLife, Inc. nor any of its subsidiaries has any franchised service territory or provides retail electric or gas service in the United States. Rather, MetLife, Inc. and its subsidiaries invest as passive limited partners in private equity limited partnerships, which may have indirect ownership interests in electric generating, transmission and interconnection facilities, and other energy related facilities. The relevant general partner, who is unaffiliated with MetLife, Inc., maintains management control of the partnership. None of these investments provide MetLife, Inc. or its subsidiaries with a controlling stake in the partnerships or provide them with management, operation, or maintenance control over the underlying energy facilities.

II. Notice and Interventions

4. Notice of MetLife's filing was published in the *Federal Register*, 70 Fed. Reg. 66,375 (2005), with protests and interventions due on or before November 18, 2005. None were filed.

III. Discussion

5. MetLife requests that the Commission find that MetLife, which has an upstream ownership interest in a generating facility, is a passive owner and will not be regarded as a "public utility" as that term is defined in section 201 of the FPA. MetLife states that it has: (1) no control over the operation of the facility; and (2) no control over any aspect of the sale or transmission of electric energy.

Section 201(b) of the FPA states, in pertinent part:

The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce.... The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy....⁵

Section 201(e) states, in pertinent part:

The term "public utility" ... means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part....⁶

⁵ 16 U.S.C. § 824(b) (2000).

⁶ 16 U.S.C. § 824(e) (2000).

6. The application of section 201 of the FPA to entities with a passive interest in jurisdictional facilities has been addressed by the Commission on numerous occasions.⁷ In those cases, the Commission employed a two-step analysis for determining whether a financial interest in jurisdictional facilities constitutes sufficient ownership that holding such interests would result in a finding of public utility status under the FPA. Under this precedent, the Commission first determines whether the passive participant will operate the facilities. The Commission then determines whether the passive participant is otherwise in the business of producing or selling electric power or has a principal business other than that of a public utility. The Commission has concluded that it would be inconsistent with the FPA to label the passive participants in certain financing arrangements as public utilities and subject them to the Commission's jurisdiction where these participants hold only equitable or legal title to the facilities and are removed from the operation of the facilities and the sale of power.

7. MetLife states that all of the operational control of the generation facility and control over the marketing and sale of the generation facility's output remains exclusively with EME Homer City. MetLife asserts that it has not been and will not be involved in any of these activities. In light of the facts presented in the petition and consistent with Commission precedent, we find that MetLife, as explained in its petition, is a passive investor that does not exercise control or decision-making authority, and that MetLife is not otherwise in the business of producing or selling electric power. Accordingly, MetLife, as a passive investor, as long as it operates in a manner consistent with the representations in its petition, would not be a public utility within the meaning of section 201(e) of the FPA.

The Commission orders:

MetLife's petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷ See, e.g., *Pacific Power & Light Company*, 3 FERC ¶ 61,119 (1978); *El Paso Electric Company*, 36 FERC ¶ 61,055 (1986); *City of Vidalia, Louisiana*, 52 FERC ¶ 61,199 (1990); *Oglethorpe Power Corporation*, 77 FERC ¶ 61,334 (1996).